

# Pathfinder on the retroactive application of the new crack cocaine sentencing guidelines

## BACKGROUND

On May 1, 2007, the United States Sentencing Commission submitted to Congress an amendment that lowers the guideline sentencing range for certain categories of offenses involving crack cocaine. This amendment became effective November 1, 2007, and applies to defendants sentenced on or after that date in federal court.

The U.S. Sentencing Commission subsequently voted, on December 11, 2007, to make the crack cocaine amendment retroactive, that is, to apply to people already serving time in federal prison for a crack cocaine offense. The effective date of this change was March 3, 2008. This means that some people may be able to reduce their sentence and the amount of time they have to spend in prison.

This reduction in sentence is not automatic and not everyone who was sentenced for using crack will be eligible for a reduction in their sentence.

The links below provide some helpful information to those seeking to have their sentence reduced and their attorneys. Nothing in this resource guide is intended to be legal advice and should not be considered such. Any questions should be made to an attorney familiar with federal criminal law.

## PRESS RELEASES

The [Chicago Tribune](#) has this article about the reduction for crack cocaine sentences. The [Associated Press](#) article notes that in order to get a release, a motion must be made before a judge. The original press release from the United States Sentencing Commission is [here](#).

## UNITED STATES SENTENCING GUIDELINES

### [U.S.S.G. § 1B.1.10 Reduction in Term of Imprisonment as a Result of Amended Guideline Range](#)

This sentencing guideline allows the federal court to reduce a defendant's time in prison as provided by [18 U.S.C. § 3582\(c\)\(2\)](#). Only certain amendments to the

sentencing guidelines are retroactive. Amendment 706 is the one that applies in crack cocaine cases. The amendment that made this effective is Amendment 712. You may see these references in various motions or news releases.

## SUGGESTED FORMS

The Federal Defenders organization has developed a variety of forms for use by attorneys. These include:

### [Ex Parte Application for Appointment of Counsel](#)

This form is to be used by the attorney who presented the prisoner in his criminal trial in order to be appointed to represent him or her in the sentence reduction motion. It includes the Financial Affidavit needed to show that the prisoner cannot afford his or her own attorney.

### [Proposed Order Appointing Counsel](#)

Order for the judge to sign appointing the previous attorney to represent the prisoner for this motion.

### [Motion for Reduction of Sentence Pursuant to 18 U.S.C. § 3582\(c\)\(2\)](#)

In addition to the actual motion, this form includes a sample memorandum of law (points and authorities) presenting facts about the defendant's sentence and the legal changes to the guidelines. This needs to be modified for every defendant.

### [Agreed Order Reducing Sentence Pursuant to 18 U.S.C. § 3582\(c\)\(2\)](#)

For use only when the U.S. Attorney's Office agrees that a sentence reduction is appropriate and it results in the prisoner's sentence being reduced to time served. Some defendants may receive reductions off their sentences but still have time left.